



PROPOSED RULE MAKING

CR-102 (August 2017)
(Implements RCW 34.05.320)
Do **NOT** use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: October 03, 2017

TIME: 11:20 AM

WSR 17-20-080

Agency: Department of Labor and Industries

☒ **Original Notice**

☐ **Supplemental Notice to WSR** _____

☐ **Continuance of WSR** _____

☒ **Preproposal Statement of Inquiry was filed as WSR 17-14-112 ; or**

☐ **Expedited Rule Making--Proposed notice was filed as WSR** _____; or

☐ **Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).**

☐ **Proposal is exempt under RCW** _____.

Title of rule and other identifying information: (describe subject) Chapter 296-128 WAC, Minimum Wages; Chapter 296-131 WAC, Agriculture Employment Standards; and Chapter 296-126 WAC, Standards of Labor for the Protection of the Safety, Health and Welfare of Employees for all Occupations subject to Chapter 49.12 RCW

New proposed rules:

WAC 296-128-780 Enforcement-Retaliation

WAC 296-128-790 Enforcement-Retaliation-Civil penalties

WAC 296-128-800 Enforcement- Retaliation-Appeals

WAC 296-128-810 Enforcement-Paid sick leave

WAC 296-128-820 Enforcement-Tips and service charges

WAC 296-128-830 Enforcement-Complaints alleging a violation of other rights under chapter 49.46 RCW-Duty of department to investigate-Citations-Civil penalties

WAC 296-128-840 Complaints alleging a violation of other rights under chapter 49.46 RCW- Administrative appeals

WAC 296-128-850 Complaints alleging a violation of other rights under chapter 49.46 RCW-Collection procedures

WAC 296-128-860 Severability clause

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
November 8, 2017	10:00 a.m.	Spokane CenterPlace Auditorium 2426 N. Discovery Pl. Spokane Valley, WA 99216	
November 9, 2017	10:00 a.m.	Labor & Industries Headquarters Auditorium 7273 Linderson Way SW Tumwater, WA 98501	

Date of intended adoption: December 19, 2017 (Note: This is **NOT** the effective date)

Submit written comments to:

Name: Allison Drake

Department of Labor and Industries

Fraud Prevention and Labor Standards

Address: Post Office Box 44400

Olympia, Washington 98504-4400

Email: i1433Rules@Lni.wa.gov

Fax: 360 902-5300

Other:

By (date) November 17, 2017

Assistance for persons with disabilities:

Contact Office of Information and Assistance

Phone: 360 902-5304

Fax:
TTY: 360 902-5797
Email:
Other:
By (date) November 1, 2017

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The purpose of this rulemaking is to propose rules pertaining to the enforcement directives related to the implementation of Initiative 1433, An Act Related to Fair Labor Standard. Initiative 1433 passed on November 8, 2016, and requires, in part, employers provide paid sick leave to employees beginning on January 1, 2018. Initiative 1433 directs the department to adopt and implement rules to carry out and enforce the act.

Reasons supporting proposal: The department must implement the will of the people as passed by Initiative 1433.

Statutory authority for adoption: RCW 49.46.810

Statute being implemented: RCWs 49.46.005, 49.46.020, 49.46.090, 49.46.100, 49.46.120, 49.46.200, 49.46.210, 49.46.810, 49.46.820, and 49.46.830

Is rule necessary because of a:

Federal Law?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: The proposed rule language describes the enforcement directives of Initiative 1433, which must be at least equal to enforcement of the minimum wage.

Name of proponent: (person or organization) Department of Labor and Industries, as directed by Initiative 1433.

☐ Private
☐ Public
☒ Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Allison Drake	Tumwater, WA	(360) 902-5304
Implementation:	Elizabeth Smith	Tumwater, WA	(360) 902-5933
Enforcement:	Elizabeth Smith	Tumwater, WA	(360) 902-5933

Is a school district fiscal impact statement required under RCW 28A.305.135?

☐ Yes ☒ No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Is a cost-benefit analysis required under RCW 34.05.328?

☐ Yes: A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

Phone:

Fax:

TTY:

Email:

Other:

☒ No: Please explain: Initiative Measure No. 1433 (I-1433), under RCW 49.46.810, requires the department adopt and implement rules to carry out and enforce the initiative, including but not limited to procedures for notification to employees and reporting regarding sick leave, and protecting employees from retaliation for the lawful use of sick leave and exercising other rights under Chapter 49.46 RCW. RCW 48.46.810 further specifies the department's rules for enforcement of rights under Chapter 49.46 RCW shall be at least equal to enforcement of the minimum wage. Administrative enforcement of the minimum wage is pursuant to the Wage Payment Act under RCW 49.48.083 through RCW 49.48.086.

There is a separate rulemaking to adopt and implement rules to carry out the substantive requirements of I-1433 (WSR 17-020-082, WSR 17-14-113). This separate rulemaking includes an assessment of the costs of the substantive requirements.

As this rulemaking addresses the administrative enforcement provisions of I-1433 and the substantive requirements of I-1433, there are no costs of compliance to employers under these rules. These proposed enforcement rules are the procedural requirements related to the investigation of complaints, issuance of civil penalties, appeals of department decisions, and collections. The rules are consistent with RCW 49.46.810, and the requirements for investigations, civil penalties, appeals, and collections under the Wage Payment Act under RCW 49.48.083 through RCW 49.48.086, or are interpretative of provisions of I-1433 and the Wage Payment Act.

Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

☐ This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

☐ This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

☐ This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

☒ This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

☐ RCW 34.05.310 (4)(b)
(Internal government operations)

☒ RCW 34.05.310 (4)(e)
(Dictated by statute)

☐ RCW 34.05.310 (4)(c)
(Incorporation by reference)

☐ RCW 34.05.310 (4)(f)
(Set or adjust fees)

☐ RCW 34.05.310 (4)(d)
(Correct or clarify language)

☐ RCW 34.05.310 (4)(g)
((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

☐ This rule proposal, or portions of the proposal, is exempt under RCW _____.

Explanation of exemptions, if necessary: Initiative Measure No. 1433 (I-1433), under RCW 49.46.810, requires the department adopt and implement rules to carry out and enforce the initiative, including but not limited to procedures for notification to employees and reporting regarding sick leave, and protecting employees from retaliation for the lawful use of sick leave and exercising other rights under Chapter 49.46 RCW. RCW 48.46.810 further specifies the department's rules for enforcement of rights under Chapter 49.46 RCW shall be at least equal to enforcement of the minimum wage. Administrative enforcement of the minimum wage is pursuant to the Wage Payment Act under RCW 49.48.083 though RCW 49.48.086.

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COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

☐ No Briefly summarize the agency's analysis showing how costs were calculated. _____

☐ Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name:


Address:

Phone:

Fax:

TTY:

Email:

Other:	
Date: October 3, 2017	Signature: 
Name: Joel Sacks	
Title: Director	